M. W. asks the Utah Labor Commission to review Administrative Law Judge Hann's dismissal of Ms. W.'s claim for benefits under the Utah Workers' Compensation Act ("the Act"; Title 34A, Chapter 2, Utah Code Ann.).

The Labor Commission exercises jurisdiction over this motion for review pursuant to Utah Code Ann. §63-46b-12 and Utah Code Ann. §34A-2-801(3).

BACKGROUND AND ISSUES PRESENTED

Ms. W. filed an application with the Commission on June 28, 2001, to compel the State of Utah and its workers' compensation insurance carrier, the Workers Compensation Fund (referred to jointly as "the State"), to pay medical expenses and disability compensation for a cervical injury allegedly caused by Ms. W.'s employment as a court reporter. Judge Hann held a hearing on August 19, 2003, then on August 29, 2004, dismissed both Ms. W.'s claim for medical expenses and her claim for disability compensation pursuant to §34A-2-417 of the Act.[1]

In requesting Commission review of Judge Hann's decision, Ms. W. argues that principles of estoppel and waiver preclude the State from asserting §34A-2-417(1) as a defense to her claim for medical expenses. She also argues that her claim for disability compensation is not barred by §34A-2-417(2)(i)'s filing requirement because she filed a timely "informal" application.

FINDINGS OF FACT

The following facts are material to the issues raised by Ms. W.'s motion for review.

After working as a court reporter for the State from 1990 until March 1995, Ms. W. developed dizziness and pain in her arms and hands. Her condition was misdiagnosed as carpal tunnel syndrome, but was nevertheless accepted as a compensable workers' compensation claim by the State. The State paid her medical expenses and disability compensation.

Ms. W. continued to receive medical care. During 1996 the misdiagnosis of carpal tunnel syndrome was set aside and she was correctly diagnosed with herniated cervical disks. She contacted the State for the purpose of reopening her workers' compensation claim, but on October 1, 1996, the State notified Ms. W. that it would not reopen the claim. Ms. W. took no action at that time to challenge the State's refusal to provide additional medical benefits or disability compensation.

Ms. W. continued to receive medical care for her cervical problems but did not submit the expenses of that care to the State for payment. Instead, she submitted the expenses to her general health care insurer.

On June 28, 2001, Ms. W. filed an application with the Commission to compel the State to pay her medical expenses and disability compensation.

DISCUSSION AND CONCLUSION OF LAW

Ms. W.'s claim for payment of medical expenses. Section 34A-2-418 of the Act requires employers or their insurance carriers to pay for medical care "necessary to treat" work-related injuries. However, an injured worker's right to medical care under §34A-2-418 is subject to the condition found in §34A-2-417(1):

> (1) Except with respect to prosthetic devices, in nonpermanent total disability cases an employee's medical benefit entitlement ceases if for a period of three consecutive years the employee does not:
>
> (a) incur medical expenses reasonably related to the industrial accident; and
>
> (b) submit the medical expenses incurred to the employee's employer or insurance carrier for payment.

Thus, the foregoing statute terminates an injured worker's right to payment of continuing medical expenses if the injured worker does not satisfy **both** conditions set out in subsections (a) and (b). In Ms. W.'s case, it is admitted that the requirement of subsection (b) was not met—no medical expenses were submitted to the State. Thus, pursuant to § 34A-2-417(1), Ms. W.'s entitlement to continuing medical care for her work-related injury has ended.

In reaching this conclusion, the Commission rejects Ms. W.'s "waiver" and "estoppel" arguments. The Commission finds no basis to conclude that the State waived its right to assert §34A-2-417(1) as a defense in this matter. As to the estoppel argument, the Commission does not view the State's conduct or representations as inconsistent, nor does the Commission view Ms. W.'s failure to submit medical expenses as either reasonable or in reliance of any statement or action by the State.

While it may be argued that this result is unfair to Ms. W., the result is dictated by the plain language of the Workers' Compensation Act. As the Utah Court of Appeals stated in Bevans v. Industrial Commission, 790 P.2d 573, 578 (Utah App. 1990), "(t)he Industrial Commission is not free to 'legislate' in areas apparently overlooked by our lawmakers or to exercise power not expressly or impliedly granted to it by the legislature, even in the name of fairness."

Ms W.'s claim for disability compensation. Section 34A-2-417(2) of the Act provides, in material part, that a claim for disability compensation "is barred, unless the employee . . . files application for hearing with the Division of Adjudication no later than six years from the date of the accident . . . ." The question before the Commission is whether Ms. W.'s claim for disability compensation is barred by the foregoing six-year limitation.

The basis for Judge Hann's dismissal of Ms. W.'s disability claim is that §417(2)'s filing requirement can only be satisfied by the filing of a particular document, namely, the Commission's Form 001—Application For Hearing. The Utah Supreme Court considered and rejected similar reasoning in Vigos v. Mountainland Builders, 993 P.2d 207 (Utah 2000). In Vigos, Justices Stewart

and Durham concluded that the filing requirement was satisfied by filing an initial report of injury, coupled with the employer/insurance carrier's acceptance of the claim and payment of benefits. In a concurring opinion, Justice Russon concluded that an employer/insurance carrier who accepts liability on a claim without requiring that the claimant file an application for hearing is thereafter estopped from raising §417(2)'s six-year statute of limitations as a defense against claims for additional benefits.

The same operative facts are present with respect to Ms. W.'s claim as were present in Vigos. Commission records establish that an Employers' First Report of Injury and Physicians' First Report of Injury were filed at the time of injury. The State initially accepted liability for Ms. W.'s claim and paid benefits. With these facts, and under the logic of either the lead or concurring opinion in Vigos, Ms. W. has satisfied the "application for hearing" requirement of § 417(2).

The Commission notes the State's argument that Vigos dealt with a claim for permanent total disability compensation, whereas Ms. W. is seeking temporary disability compensation and permanent partial disability compensation. The Commission views that distinction as immaterial under the reasoning of either the lead opinion or concurring opinion in Vigos.

Summary. The Commission agrees with Judge Hann that Ms. W.'s entitlement to further medical care for her cervical injury of March 1995 has ended pursuant to §34A-2-417(1) of the Act. However, Ms. W.'s claim for disability compensation is not barred by §34A-2-417(2). The Commission will remand that portion of Ms. W.'s claim to Judge Hann for further adjudicative proceedings.

ORDER

The Commission affirms Judge Hann's dismissal of Ms. W.'s claim for additional medical benefits. The Commission reverses Judge Hann's dismissal of Ms. W.'s claim for additional disability compensation and remands such claim to Judge Hann for resolution. It is so ordered.

Dated this 3rd day of August, 2004.

R. Lee Ellertson, Commissioner

1. Judge Hann's decision refers to § 35-1-98, as the Act was numbered at the time of Ms. W.'s injury. Section §35-1-98 was renumbered as §34A-2-417 on July 1, 1997, but no textual changes were made at that time. Then, effective May 3, 1999, further amendments were made to the statute of limitations found in subsection (2) of §34A-2-417. As a general rule, statutory changes are not applied retroactively. However, amendments that are merely procedural, such as amendments to statutes of limitation, are applied retroactively. Consequently, the current version of § 34A-2-417 is properly applied to Ms. W.'s claim.